IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.25822 of 2023 (O&M)
Date of Decision:22.05.2023

Major Singh@ Major

..…... Petitioner

V/s.

State of Punjab

….....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Mr. Dhruv Dayal, Addl. A.G., Punjab.

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Harpreet Singh Brar, J.

1. The present petition has been filed under Section 482 of Code of Criminal Procedure (Cr.P.C) for quashing of impugned order dated 20.12.2022 (Annexure P-5) passed by trial Court whereby the bail bond and the surety bonds of the petitioner has been cancelled and forefeited to the State and non bailable warrants have been issued against him in case FIR No.52 dated 15.07.2018, under Section 21/22 of NDPS Act, 1985, registered at Police Station Mehta, District Amritsar.

2. As per allegations in the FIR, the alleged recovery is of 15 grams of heroin which is non-commercial in nature. The petitioner was granted the concession of regular bail vide order dated 27.09.2018. The petitioner has been regularly appearing before the trial Court since he was granted bail. The charges were framed against him on 30.08.2019. On 07.10.2022, the petitioner appeared before the trial Court and the prosecution witnesses were summoned for 20.12.2022. On 20.12.2022, petitioner could not appear as he was not well. He had given an intimation to his counsel to file an application

for exemption but the same was not be filed. The trial Court forefeited his bail bonds and surety bonds and issued non bailable warrants against him. Thereafter, the trial Court initiated proceedings under Section 82 Cr.P.C. which are now pending for 06.06.2023.

CONTENTIONS

3. Learned counsel for the petitioner contended that the non bailable warrants of arrest have been issued in a mechanical manner and in the same fashion proceedings under Section 482 Cr.P.C. are initiated therefore, the impugned orders are passed in complete violation of the procedures prescribed under the statute.

4. Notice of motion.

5. On the asking of the Court, Mr.Dhruv Dayal, Additional Advocate General, Punjab accepts notice on behalf of the respondent-State.

6. Chapter VI of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') lays down the procedure relating to issuance of summons, warrants of arrest, proclamation and attachment. Undisputedly, the petitioner could not appear before the learned trial Court on 20.12.2022 and on the same date his warrants of arrest have been issued. Following order was passed by the learned trial Court:

> " *Accused Major Singh is absent without any intimation. Today neither accused Major Singh nor any exemption application on behalf of accused moved. Bail order of accused stands cancelled. Bail bonds and surety bonds cancelled and forefeited to State. Non bailable warrants of accused Major Singh be issued for 3.4.2023. Notice to surety be also issued for the date fixed."*

7. The warrants were issued in terms of Section 73 of the Code and bailable warrants and surety bonds were cancelled and forefeited in terms of Section 446 of the Code. Composite order (Annexure P-5) was passed by cancelling bail and forefeiture of the surety bonds including issuance of non-bailable warrants to the petitioner. Now the issue before this Court is whether the aforesaid composite order (Annexure P-5) fulfills the conditions laid down under Section 73 of the Code, which reads as under:-

> *"Section 73. Warrant may be directed to any person.*
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> *(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.*
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> *(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.*
>
> *(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section* 71."

8. A perusal of scheme of Section 73 indicates that a Magistrate has jurisdiction to issue warrants of arrest to any person if he is

(1) an escaped convict;
(2) a proclaimed offender
(3) a person who is accused of non bailable offence and evading his arrest

9. The above composite order (Annexure P-5) was issued solely on the ground that the petitioner is an accused of non bailable offence. In a considered opinion of this Court, only because a person who is accused of

non bailable offence will not satisfy the ground on which the Court can issue warrants of his arrest, as per the provisions of Section 73 of the Code. If an accused is involved in a non bailable offence the warrants of arrest can only be issued if he is evading his arrest. A perusal of the impugned order (Annexure P-5) does not indicate in any manner that the petitioner is evading his arrest. The present FIR was registered on 15.07.2018, and the petitioner has been regularly appearing before the trial Court, the charges were framed against the petitioner on 30.08.2019 and he has attended the trial Court proceedings regularly and only on the ground of absence on one date, the learned trial Court instead of issuing bailable warrants, proceeded directly to issue non-bailable warrants. A perusal of the impugned order (Annexure P-5) indicates that the order was passed even without assigning any reasons or recording satisfaction that the petitioner is evading his arrest. This Court finds that to draw a conclusion that the accused is evading his arrest there must exist reasonable grounds and the Court is required to record its satisfaction that the presence of the accused cannot be secured by summons or bailable warrants and there are valid grounds available on record to presume that the accused is willfully evading his arrest.

10. Article 21 of the Indian Constitution mandates that , no person shall be deprived of his personal liberty except through procedure established by law and a person is presumed to be innocent until proven guilty._The Hon’ble Supreme Court has authoritatively elaborated the principle of law that issuance of non-bailable warrants of arrest directly would amount to curtailment of liberty of a person which can only be done strictly in accordance with the procedure prescribed under the law. A three Judge Bench

of the Hon'ble Supreme Court **Inder Mohan Goswami and another v. State of Uttranchal and others 2007 (12) SCC 1**, held that if the presence of the accused can be ascertained by summons or bailable warrants, non-bailable warrants should not generally be issued. It also laid down the circumstances in which such warrants can be issued. Speaking through Justice Dalveer Bhandari, the following observations were made:

> "*When non-bailable warrants should be issued*
>
> *49. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:*
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> ** it is reasonable to believe that the person will not voluntarily appear in court; or*
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> ** the police authorities are unable to find the person to serve him with a summon; or*
>
> ** it is considered that the person could harm someone if not placed into custody immediately.*
>
> *50. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.*
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> *51. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the*

accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."

11. The Bench further opined that while Article 21 of the Constitution states that "no one shall be deprived of his liberty except in accordance with the procedure prescribed by law", a balance needs to be struck between personal liberty and upholding interests of the society by maintaining law and order. In this context, it was held that:

"47. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

48. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

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52. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

53. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

12. A two Judge Bench of the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin v. State of Maharashtra and Anr 2011(4) R.C.R(Cri) 212**, held that:

"*9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice." Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to*

attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter- alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding"

13. There is no material available on record for the trial Court to entertain reasonable belief that the petitioner has absconded to issue non bailable warrants at the first instance when the accused was on bail and regularly attending the trial Court proceedings. The prescribed procedure under Section 73 of the Code has not been complied with and the composite order (Annexure P-5) is bereft of any reasoning.

14. The Hon'ble Supreme Court has clearly laid down in **State of Orissa Vs.Dhani Ram 2004(5) SCC 568** that assigning reasons in an order is in the interest of justice and the accused is also entitled to know the reasons on which the decision of the Court has gone against him. This is a minimum requirement of natural justice and reasons are the heart beat of the judicial process.

"*7.Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152).*

8.Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The

emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

The above position was highlighted by us in State of Punjab Vs. Bhag Singh 2004 (1) SCC 547."

15. In view of the ratio of law laid down by the Hon'ble Supreme Court in judgments of ***Inder Mohan Goswami*** *(supra) and* ***Raghuvansh Dewanchand Bhasin*** *(supra)* it is abundantly clear that the Court has power to issue non bailable warrants but the same cannot be issued at the first instance without exhausting the other methods to secure the attendance of the accused.

16. The Hon'ble Supreme Court reaffirmed the same in **Satender Kumar Antil v. Central Bureau of Investigation 2023(1) SCC(Cri) 1** by holding that the Court cannot directly serve non-bailable warrants at the first instance and that a bailable warrant for personal appearance of the accused must be issued first. Speaking through Justice M.M. Sunderesh, it was held that:

"*32. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a*

bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in ***Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1****. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person.*"

17. In **Vikas v. State of Rajasthan 2014(3) SCC 321**, a two Judge Bench of the Hon'ble Supreme Court made the following observations on personal liberty:

"14. The Constitution of India is the grundnorm the paramount law of the country. All other laws derive their origin and are supplementary and incidental to the principles laid down in the Constitution. Therefore, Criminal Law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in the case of ***Inder Mohan Goswami; 2007(12) SCC 1*** *and in the case of* ***RaghuvanshDewanchand Bhasin v. State of Maharashtra and Anr; (2012)9 SCC 791*** *wherein it has been observed that personal liberty and the interest of the State Civilised countries is the most precious of all the human rights.*

The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the Procedure prescribed by law. The issuance of non-bailable warrant involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants."

18. A Division Bench of the Bombay High Court in **Walmik s/o DeoraoBobdev. State of Maharashtra 2001 All MR(Cri) 1731**, speaking through Justice J.N. Patel, held that:

"*9. xxx*

The safest mode has to be adopted by the Court in securing attendance of accused by issuing summons or notice to the surety in case there is a surety and on being satisfied that in-spite of service of summons the accused is not responding or not attending the Court, then take steps of issuing bailable warrant against the accused, and also initiate action against his surety for forfeiture of surety bond, and even after this the accused does not respond or does not appear, then by way of last resort the court may issue non bailable warrant. We say so because it is not due to the fault of the accused he is absent before the Court, but it is due to the fault of the Court, that his case has not been taken up and kept in dormant file, and if the case is to be revived by placing it on regular board, then the steps to procure the attendance of the accused and the procedure to be adopted for the same has to be just and fair. In such cases if the Magistrate

issues a non bailable warrant against the accused, at the first instance it may result in miscarriage of justice, as the accused though he is on bail is rearrested without first ascertaining his availability through means of issuing summons or bailable warrant, and in such a case person may unnecessarily be required to be arrested, detained in police custody and then produced before the Court. This we have observed in case of accused who are waiting for years in order to face their trial in the subordinate Courts."

19. The next issue which requires determination in the present case is with regard to issuance of process under Section 82 of the Code. The trial Court after passing the order (Annexure P-5) on 20.12.2022 posted the case for 03.04.2023.

20. On 03.04.2023, the following order was passed:

"Non bailable warrants of accused Major Singh s/o Malkit Singh received back with the report that accused is concealing himself as such warrants cannot be executed . This court is satisfied that accused is concealing himself and as such his service cannot be procured through warrants of arrest. Now proclamation under Section 82 Cr.P.C. against accused Major Singh s/o. Malkit Singh be issued for 6.7.2023. Serving constable is directed to effect the proclamation on or before 6.6.2023."

21. Section 82 of the Code has provided an elaborate procedure for issuance of proclamation against the accused. Section 82 of the Code reads as under:

"*82. Proclamation for person absconding.*

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a

written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:--

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]

22. As per Section 82(1), the proclamation could only be issued if the Court has reasons to believe that the accused has absconded or

intentionally concealing himself but the order dated 03.04.2023 (Annexure P-6) does not indicate the compliance of the above provisions. The Court has not recorded its satisfaction or the reasons on which it came to believe that the petitioner has absconded or intentionally concealing himself.

23. A plain reading of Section 82(1) of the Code implies that the Court is first required to record its satisfaction before issuance of process under Section 82 and non recording of the satisfaction itself makes such order suffering from incurable illegality. This Court is *prima facie* satisfied that the impugned orders (Annexures P-5 and P-6) were passed in a mechanical manner without following the drill of the procedure prescribed under the Code. There is nothing on record which could remotely suggest that the learned trial Court has sufficient reasons to believe that the petitioner has absconded or he is intentionally concealing himself to avoid execution of the warrants and such departure from the mandatory compliance of Section 82(1) would render the impugned order (Annexure P-6) unsustainable in the eyes of law and the same is required to be quashed.

24. The Delhi High Court in **Sunil Tyagi v. Govt Of NCT Of Delhi 2021 Cri LJ 3461** opined that:

> *"21. The legislature by enacting Section 174A IPC has further penalised the non-appearance of a proclaimed offender. The very basis of fair trial is threatened if an accused/suspect is declared as a proclaimed offender without proper service, or if proclamations and non-bailable warrants are issued in a routine manner.*
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> XXX
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> *The conundrum being faced by this Court in respect of routine issuance and declaration of proclamations is inevitably linked to*

the processes preceding the issuance of proclamation such as improper issuance and execution of warrants. In ***Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1,*** *the Supreme Court highlighted that issuance of non-bailable warrants interferes with personal liberty and the Courts should be extremely careful before issuing non-bailable warrants. The Supreme Court further held that warrants, either bailable or non-bailable, should never be issued without proper scrutiny of facts and complete application of mind. What has to be ensured is that the concerned person was made aware about the legal process pending against him."*

25. Another issue which has drawn the attention of this Court in the manner in which the forefeiture of the surety bonds was done by the learned trial Court in terms of Section 446 of the Code. Section 446 of the Code reads as under:

"446. Procedure when bond has been forefeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.--A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[1][Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, [2] [after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5)Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."

Section 446-A of the Code reads as under:

***"446A. Cancellation of bond and bail bond**.-- Without prejudice to the provisions of section 446, where a bond under this Code is*

for appearance of a person in a case and it is forfeited for breach of a condition,---

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient."

26. Bond in terms of bail is taken as a security that ensures the appearance of the accused before the court on the date fixed for this purpose. Section 446 deals with forfeiture of a bond. It further provides the_accused with an opportunity to show cause, as to why the bond be not forfeited unless proven to the court in a satisfactory manner. This provision recognizes the right of the accused to be heard, following the principle of *Audi Alteram Partem* and it provides a procedural safeguard against arbitrarily forefeiture of bonds without providing the accused with a chance to show sufficient cause for not appearing before trial court.

27. Learned trial Court is empowered under Section 439(2) and Section 437(5) of the Code to cancel the bail but such an order can only be passed after issuance of notice to the accused to grant him an opportunity to explain why the bail granted to him, should not be cancelled. The impugned orders (Annexure P-5) vide which the bail of the petitioner was cancelled

indicates no such recourse was taken by the learned trial Court. The forefeiture of the bonds can only be done on the ground of breach of condition imposed on the accused while granting bail. The impugned order (Annexure P-5) was passed solely on the ground that the accused has not appeared on 21.12.2022 before the trial Court. The mere absence of the petitioner on one date would not be sufficient to conclude that there is a willful breach of the conditions as provided under Section 446 of the Code.

28. A similar view has been taken by the Himachal Pradesh High Court in **Narata Ram Vs. State of Himachal Pradesh, 1994(2) RCR (Crl.) 155** wherein the following has been observed:

> *"10. The Scheme of Section 446 of the Code of Criminal Procedure envisages two stages, as indicated above. No doubt, accused did not appear nor they could be produced by the petitioner and non-bailable warrants had been issued for their appearance on 1st July, 1992, the Court below had also afforded an opportunity to the petitioner to produce the accused on 1st July, 1992. Had this last opportunity to produce the accused been afforded, the portion of the order dated 25th May, 1992, directing the forfeiture of the amount under the bonds was legal and valid and for the reasons stated above, the Court could be deemed to have satisfied regarding the existence of reasonable grounds for directing the forfeiture of the bond. Here, a composite order was passed. The petitioner could have produced the accused on 1st July, 1992 and had he complied with the order to this effect, the circumstances would not have attracted the issuance of order forfeiting the bonds. Thus, in such circumstances, the Court cannot be deemed to have satisfied itself as to the existence of grounds for directing the issuance of forfeiture of the bonds on 25th May, 1992. In other words, the trial Court committed an illegality by exercising jurisdiction*

improperly, which had also not been noticed by the appellate Court."

29. In view of the factual position of the law discussed above, this Court is of the considered opinion that for passing any orders in terms of Section 73(1), Section 82(1), Section 446 of the Code, the recording of the satisfaction with regard to evading of the arrest, the willful concealment and breach of the conditions of the bail bond is absolutely necessary. The constitutional protection provided under Article 21 requires that the accused must be granted opportunity in terms of principles of natural justice before any adverse order curtailing a person's liberty is passed. The Courts cannot issue non bailable warrants in a routine manner without following the drill prescribed under the Code. The Court is required to record its satisfaction on the basis of material available on record and atleast assign reasons for concluding that the accused is willfully evading his arrest and the warrants cannot be executed. The non-bailable warrants are only to be issued after exhausting the other methods of securing the presence of the accused. Mere absence of the accused on one date before the trial Court in itself is not sufficient to conclude that he is evading his arrest and cannot be the sole ground for issuance of non bailable warrants. The Courts can most certainly take into consideration the conduct of the accused if he is impeding the progress of the trial and is on earlier occasion he was declared a proclaimed offender and on account of his continuous absence from the trial, the trial has been considerably protracted. His past behaviour is a relevant for the purpose of recording satisfaction under the relevant provisions of the Code.

30. In view of the above discussion, this Court finds that the learned trial Court has not followed the drill of the procedure provided under Sections 73, 82, 446 of the Code. The Hon'ble Supreme Court in **Anuradha Bhasin Vs. Union of India 2020(3) SCC 637** has laid down the ratio that the procedural safeguards provided under the statute are required ot be mandatorily followed and following was observed:

> "*98. We also direct that all the above procedural safeguards, as elucidated by us, need to be mandatorily followed. In this context, this Court in the Hukam Chand Shyam Lal case (supra), observed as follows:*
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> > *"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other amodes (sic) of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature..." (emphasis supplied)."*

31. The sole purpose for cancellation of bail bonds or issuance of proclamation is to secure presence of the accused. The petitioner in the present case undertakes to appear before the learned trial Court on each and every date.

32. The learned State counsel is not able to controvert the factual position as well as the settled law on the issue at hand.

CONCLUSION

33. Accordingly, the present petition is allowed and the impugned orders dated 20.12.2022 and 03.04.2023 Annexure P-5 and P-6, respectively, passed by the learned trial Court are set aside and the petitioner is directed to appear before the learned trial Court on or before 03.07.2023 and on his doing so the learned trial Court shall admit him to bail on furnishing of fresh bail

bonds alongwith costs of Rs.10,000/- for wasting the valuable time and process of the Court, to be paid to District Legal Services Authority, Amritsar.

34. Disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

22.05.2023
Sonia Puri

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No